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8 **Attorney for Plaintiff**

9
10 **IN THE UNITED STATES DISTRICT COURT**
11 **DISTRICT OF MONTANA**
12 **BILLINGS DIVISION**

13 **DENNIS NAVE,**

14 **Plaintiff,**

15 **vs.**

16 **CMG CONSTRUCTION, INC.**

17 **Defendant.**

18 **) Cause Number CV-17-**

19 **) COMPLAINT AND**

20 **) 1. FAIR LABOR STANDARDS ACT OF 1938**

21 **) 29 U.S.C. §§ 201 ET SEQ.**

22 **) 2. MONTANA WAGE AND WAGE**

23 **) PROTECTION STATUTE**

24 **) DEMAND FOR JURY TRIAL**

25 **COMES NOW** the plaintiff Dennis Nave, by and through his counsel of
26 record Geoffrey C. Angel, and for his claims for relief alleges as follows:

27 **NATURE OF ACTION**

- 28
1. Dennis Nave brings these claims against CMG Construction, Inc. for the untimely payment and failure to pay his regular wage, vacation pay, fringe benefits and overtime wage under the federal Fair Labor Standards Act of 1938 and under Montana's Wage and Overtime Compensation Act.
 2. Mr. Nave worked for CMG Construction, Inc. during the past three years and has a right to recover all wages, fringe benefits, statutory penalties, interest, costs and attorney fees for CMG Construction, Inc. wilful violation of the wage and overtime protection statutes.

1 3. Mr. Nave worked for CMG Construction, Inc. From April 17, 2013 to
2 November 1, 2016 with his primary duty being a heavy equipment
3 operator with various minor duties.
4

5 4. CMG Construction, Inc. paid Mr. Nave his regular wage but failed to
6 pay overtime, failed to timely pay his wages and fringe benefits and
7 failed to maintain a record of the hours he worked.
8

9 5. CMG Construction, Inc. owes Mr. Nave, unpaid wages, unpaid
10 overtime and fringe benefits along with the statutory penalty and
11 interest in an amount in excess of \$400,000 together with interest,
12 costs and attorney fees.
13

14 APPLICABLE FEDERAL LAW

15 6. This action is brought pursuant to 29 U.S.C. §§ 201 et seq, the Fair
16 Labor Standards Act of 1938. CMG Construction, Inc. is engaged in
17 interstate commerce, is incorporated in the State of Montana with its
18 principle place of business in Billings, Montana. CMG Construction,
19 Inc. engages in the interstate performance of construction contracts
20 and accepts payment for goods and services which are processed
21 through channels of interstate commerce.
22

23 7. This Court has subject matter jurisdiction pursuant to 18 U.S.C. §§
24 1962, 1964(a)(equity); and 28 U.S.C. § 1367(a)(supplemental
25 jurisdiction).
26

27 8. Jurisdiction is also proper in Federal District Court under 28 U.S.C. §
28 1331 because this case presents a federal question and the state law

1 claim is properly included under supplemental jurisdiction pursuant
2 to 28 U.S.C. § 1367.
3

- 4 9. Venue is proper in the Billings Division of the Federal District of
5 Montana because all parties are residents of Billings, Yellowstone
6 County, Montana.
7

8 **APPLICABLE STATE LAW**

- 9 10. Plaintiff's claims are also being brought pursuant to Montana Code
10 Annotated §§ 39-3-401 et seq, the Minimum Wage and Overtime
11 Compensation Act.
12

13 **COUNT-1-FAIR LABOR STANDARDS ACT OF 1938 (29 U.S.C. §§ 201 ET SEQ)**

- 14 11. Plaintiff realleges and incorporates by reference paragraphs 1 through
15 10 as if fully set forth herein.
16
17 12. CMG Construction, Inc. was required by state and federal law to
18 maintain a record of the hours plaintiff worked but failed to do so.
19
20 13. CMG Construction, Inc. failed to timely and fully pay plaintiff all of
21 the wages and fringe benefits to which he was entitled.
22
23 14. CMG Construction, Inc. failure to pay was wilfull.
24

25 **COUNT-2-VIOLATION OF MCA §§ 39-3-101, ET SEQ.**

- 26 15. Plaintiffs reallege and incorporate by reference paragraphs 1 through
27 14 as if fully set forth herein.
28

1
2 16. CMG Construction, Inc. had a statutory duty to pay plaintiff all of the
3 wages and fringe benefits to which he was entitled.
4

5 17. CMG Construction, Inc. did not pay plaintiff all of the wages and
6 fringe benefits to which he was entitled.
7

8 **WHEREFORE**, Dennis Nave respectfully prays for judgment as follows:

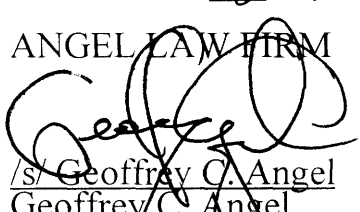
- 9 A. An amount to be proved at trial for the failure to timely and fully pay
10 regular wages, overtime wages and fringe benefits and an equal
11 amount or 110% in liquidated damages pursuant to 29 U.S.C. §
12 216(b) and Section 39-3-206, MCA.
13 B. Interest on the sums untimely paid;
14 C. The costs incurred in pursuing this matter, including a reasonable
15 attorney's fee in accordance with 29 U.S.C. § 216(b) and Section 39-
16 3-214, MCA; and
17 D. Such other and further relief as this Court deems just and proper in
18 this cause.
19

20 **DEMAND FOR TRIAL BY JURY**

21 Plaintiff demands trial by jury on all issues of this action.
22

23 DATED this 5 day of January 2017

24 ANGEL LAW FIRM

25 
26 /s/ Geoffrey C. Angel
27 Geoffrey C. Angel
28 ANGEL LAW FIRM
Attorney for Plaintiff